

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

DIANA WALKER

Plaintiff.

v.

**UNITED STATES OF AMERICA
and
SHANE LEONARD**

Defendants.

CASE NO. 1:22-cv-00821

PLAINTIFF'S COMPLAINT FOR DAMAGES

Plaintiff, Diana Walker, by counsel, DELK McNALLY, LLP, for her Complaint against Defendants, United States of America and Shane Leonard, alleges and states as follows:

Parties, Jurisdiction and Venue

1. Plaintiff, Diana Walker, at all times relevant hereto, is a citizen of Muncie, Delaware County, Indiana.

2. Defendant, United States of America, is a sovereign country and is subject to civil suit in the United States District Court for money damages as a result of personal injuries sustained by the Plaintiff that were caused by an employee of the United States of America while acting within the course and scope of employment with the United States of America.

3. Defendant, Shane Leonard, at all times relevant hereto, was an employee of the United States of America Government and acting within the course and scope of employment on behalf of the Government on the date of the subject accident—April 28, 2022.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1346(b)(1) as this is an action for personal injuries caused by the negligent acts of a United States of America

Governmental Agency employee while that employee was acting within the course and scope of his employment on behalf of the United States Government.

5. Venue is proper in the United States District Court for the Southern District of Indiana, pursuant to 28 U.S.C. §1402(b) and §1391(b)(2), because: (i) the Plaintiff resides in the Southern District of Indiana and (ii) the negligent acts and occurrences which the form the basis of this Complaint took place within the Southern District of Indiana.

Facts Common to All Allegations

6. On April 28, 2022, Plaintiff, Diana Walker, was operating her vehicle in Muncie, Delaware County, Indiana travelling east bound on Jackson Street, approaching Hackley Avenue.

7. At the same time, Defendant Leonard was operating his vehicle on Hackley Avenue headed north on Hackley Avenue. Hackley Avenue has a stop sign, which requires drivers to stop and yield to eastbound traffic on Jackson Street.

8. There is no stop sign for Plaintiff travelling east bound on Jackson Street and Jackson Street is a one-way street where Hackley Avenue intersects with Jackson Street.

9. As Plaintiff was crossing the intersection of Jackson Street and Hackley Avenue, Defendant Leonard disregarded the stop sign on Hackley Avenue and/or failed to yield to Plaintiff thereby causing Defendant Leonard to pull out in front of Plaintiff's vehicle, causing Plaintiff's vehicle to violently collide with Defendant Leonard's vehicle.

10. As a result of Defendant Leonard's disregard of the stop sign and/or failure to yield and/or failure to keep a proper lookout, Plaintiff suffered severe, life-long personal injuries and other damages.

11. At the time of the above-described accident, Defendant Leonard was an employee of a Governmental Agency of the United States of America and was acting within the course and scope of his employment with the Governmental Agency of the United States of America.

12. Prior to the initiation of this litigation, on April 27, 2021, Plaintiff caused to be served and delivered to the Federal Governmental Agency for which Defendant Leonard was employed, a tort claim notice in accordance with 28 U.S.C. §2675(a). At the time of filing this action, the subject Federal Governmental Agency has failed to make final disposition of the tort claim within six (6) months, and, therefore, Plaintiff has elected to pursue this litigation in accordance 28 U.S.C. §2675(a).

Count I—Negligence--Federal Tort Claim: 28 U.S.C. §§1346(b) & 2679(b)(1)

13. Plaintiff repeats and incorporates by reference the allegations set forth in paragraphs 1 through 12 as if fully stated herein.

14. Defendant Leonard has (and had) a duty of care to operate his vehicle in a safe, appropriate and lawful manner.

15. Defendant Leonard was negligent and breached his duty of care in at least the following ways: (1) disregarding the stop sign on Hackley Avenue and travelling directly into Plaintiff's path; (2) failing to yield and/or stop at the Hackley Avenue stop sign; (3) failing to keep a proper lookout while operating Defendant Leonard's vehicle; (4) violating the traffic laws of the State of Indiana and local ordinance; and (5) operating Defendant's vehicle in a careless, reckless and distracted fashion.

16. Defendant Leonard, through the negligent and unlawful operation of his vehicle (which is owned by the United States of America), caused serious personal injuries and damages

to the Plaintiff, including but not limited, medical bills, medical treatment, pain and suffering and lost wages.

17. At the time of the above-described accident, Defendant Leonard was an employee of a Governmental Agency of the United States of America and was acting within the course and scope of his employment with the Governmental Agency of the United States of America.

18. Accordingly, pursuant to 28 U.S.C. §§1346(b), 2674 & 2679(b)(1), Defendant, United States of America, is liable for the personal injuries and damages sustained by the Plaintiff as a result of Defendant Leonard's negligent actions, which negligent actions were done while Defendant Leonard was acting within the course and scope of his employment with the subject United States of America Governmental Agency.

WHEREFORE, Plaintiff respectfully requests that Judgment be entered in favor of Plaintiff and against Defendant, United States of America, an award of compensatory damages and for all other just and proper relief.

Count II—Alternative Negligence Cause of Action Against Defendant Leonard

19. Plaintiff repeats and incorporates by reference the allegations set forth in paragraphs 1 through 18 as if fully stated herein.

20. To the extent it is determined that Defendant Leonard was not acting within the course and scope of his employment with the subject Governmental Agency of the United States of America, then Defendant Leonard is individually liable for the above-described negligence.

WHEREFORE, Plaintiff respectfully requests that Judgment be entered in favor of Plaintiff and against Defendant Leonard, an award of compensatory damages and for all other just and proper relief.

JURY TRIAL DEMAND

Plaintiff, by counsel, hereby demands a trial by jury for matters asserted in this Complaint.

Respectfully submitted,

DELK McNALLY LLP

/s/ Jason R. Delk

Jason R. Delk, Atty. No. 24853-18

Attorney for Defendant, Edward Kessler

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